



STATE OF DELAWARE
DEPARTMENT OF AGRICULTURE
2320 SOUTH DUPONT HIGHWAY
DOVER, DELAWARE 19901
AGRICULTURE.DELAWARE.GOV

MICHAEL T. SCUSE
SECRETARY

TELEPHONE: (302) 698-4500
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Respondent:

Chris Magee
35039 Lighthouse Road
Selbyville, Delaware 19975

Violations:

§1224(b)(1) –First offense of 1224(a)(1) Making a pesticide recommendation or use or application inconsistent with the labeling.

§1224(c)(1) – Operating in a faulty, careless or negligent manner.

Penalty:

Respondent signed a consent agreement in November 2022. In the agreement, Respondent agrees to the imposition of disciplinary sanctions which included a civil penalty of \$756.00

STIPULATED FACTS

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1. Chris Magee (“Respondent”) is a private pesticide applicator located at 35039 Lighthouse Road, Selbyville DE, 19975. Chris Magee holds a valid private applicators certification issued (Certification No. 11-3710) by the Delaware Department of Agriculture (“the Department”).
2. Mrs. Ellen Magee is related to Mr. Chris Magee and is part of the farming operations.
3. Josh Emhoff is employed as the manager of Simplot Grower Solutions located at 1842 Broad St., Pocomoke City, Md 21851.
4. Kip Shockley is employed as the manager of Nutrien Ag. Solutions Inc. located at 7311 Ocean Highway, Pocomoke City, Md 21851.
5. Brian Schilling is employed as manager of Growmark FS of Dagsboro, located at P.O. Box 278 Dagsboro, DE 19939.
6. The Pesticide Section of the Department (“Complainant”) is bringing this enforcement action against Respondent. Dustin Bornreger, (“Mr. Bornreger”) is employed as an



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Environmental Scientist III with the Department. James Hughes, (Mr. Hughes) is employed as an Environmental Program Manager I with the Department.

7. On August 9th, 2022, the Department received a complaint call from a farmer who was concerned about possible herbicide drift damage to his soybean crop. On August 10th, 2022, Bornltreger arrived at the farm located in Frankford DE. The soybeans exhibited damage typically seen from the herbicide dicamba. Bornltreger photographed the damaged beans and collected two vegetative samples. Sample SN233009 and SN233010. During this inspection the farmer identified the neighboring farmer who was suspected of drift as Chris or Ellen Magee, they were unsure who oversaw the field.
8. After leaving the farm field and upon entering his vehicle, Bornltreger contacted Chris Magee (Respondent). Bornltreger asked the respondent if he was familiar with the field in question and the respondent replied that the field was farmed by his mother Ellen Magee, but he does the spray applications. Bornltreger then asked the respondent what had been applied to the field. The respondent replied that he would not say until he spoke to his mother.
9. Bornltreger called Ellen Magee after hanging up with Chris Magee. No records were available to give to the department due to computer issues and no paper records were allegedly recorded. On August 12th, 2022, Bornltreger received an email from Mrs. Magee that contained a pesticide application record, Bornltreger attempted to contact the Respondent and Mrs. Magee for more information but no communication was received back. This email stated that an application of Roundup qt/A, Clarity pt/A and Metribuzin .25lbs/A were applied on June 30th, 2022. July 5th planted beans; July 28th sprayed with Roundup qt/acre.
10. Bornltreger began visiting pesticide dealers in the area to see what pesticides had been purchased by the respondent to try and determine what possible herbicides had been used. Bornltreger visited, Simplot Grower Services, Nutrien Ag. Solutions and Growmark FS. Growmark FS located in Dagsboro was the only dealer that had sales records for Magee. The sales records collected include herbicides that contain the following active ingredients: 2,4D, Paraquat, Glyphosate and Dicamba. These sales records included the product Clarity Herbicide, EPA Reg. 7969-137, active ingredient dicamba. The records showed that Gramoxone SL 3.0, EPA Reg. No. 100-1652, active ingredient paraquat was purchased by Danny Magee on 6/7/2022. The sales records also showed that the brand name of the glyphosate products are Bullzeye HL-K, EPA Reg. No. 524-539-534 (4.5 pounds of glyphosate per gallon) and Durango DMA, EPA Reg. No. 62719-556 (4 pounds of glyphosate per gallon). Copies of these sales records are included in the case file.



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11. On August 15th, 2022, Hughes emailed the National Pesticide Safety Education Center to inquire as to whether Ellen or Chris Magee had completed the label required paraquat training. The National Pesticide Safety Education Center replied that no individuals from Delaware with those names took the training. This email correspondence is included in the case file.
12. On August 16th, 2022, Borntreger contacted Bayer Crop Science to verify what dicamba products can be used on post plant preharvest dicamba soybeans. Bayer Crop Protection Strategy Lead replied in email that three herbicides are approved for use on Roundup ready 2 Xtend or XtendFlex soybeans. Those three products are Xtendimax with vapor Grip Technology from Bayer Crop Science, Engenia Herbicide from BASF and Tavium Plus VaporGrip Technology. This email is included in the case file.
13. On August 18th, 2022, Hughes and Borntreger stopped at the Magee produce stand to speak with Ellen Magee, she stated she could not talk due to illness. After this encounter it was determined that a meeting at the Department with the Secretary of Ag. was the next appropriate action.
14. On September 23rd, 2022, Ellen and Chris Magee arrived at the Department to meet with Secretary Scuse, Hughes and Borntreger. Hughes and Borntreger had prepared questions to ask. The questions and answers are as follows. Has the Gramoxone purchased on 6/7/2022 been used at all? The response given was that Chris Magee used the Gramoxone to spray the strawberry middles. What type of dicamba beans are planted? Answer BASF Engenia soybeans. Where has the 170 gallons of Clarity that was purchased from Growmark this year been applied. Response, Corn, Soybeans, Sorghum. Was any of the Clarity applied over the top to soybeans? Yes, Clarity had been applied over the top, but not in the Frankford area.
15. The Clarity Herbicide labels states in part: "Following application of Clarity and a minimum accumulation of 1" rainfall or overhead irrigation, a waiting period of 14 days is required for 8 fluid ounces per acre or less and 28 days for 16 ounces per acre. These intervals must be observed prior to planting soybeans or crop injury may occur." The Clarity Herbicide label also states in part: "Preharvest Applications: Clarity can be used to control many annual and perennial broadleaf weeds and control or suppress many biennial and perennial broadleaf weeds in soybean prior to harvest. Apply 8-32 ounces of Clarity per acre as a broadcast or spot treatment to emerged and actively growing weeds after soybean pods have reached mature brown color and at least 75% leaf drop has occurred."



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16. The Gramoxone SL 3.0 label states in part: “2.2.4 ADDITIONAL CERTIFIED APPLICATOR Paraquat Dichloride Training – Applicators must complete an EPA-approved paraquat training listed on the following website <https://epa.gov/pesticide-worker-safety/paraquat-dichloride-training-certified-applicators>. The training must be completed a minimum of every three years.

In the past 5 years, Respondent has no pesticide compliance violations with the Department.